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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
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BY:

7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 JEFFERY DELONG, individually and on
behalf of all others similarly situated,

11 Plaintiff,

12 vs.

13 TAXMASTERS, INC., a Nevada
corporation, TMIRS ENTERPRISES,
14 LTD., a Texas partnership, and DOES 1
through 50, inclusive,

15 Defendants.

CASE NO.: **CV11 01431 ODW (AGRx)**

16 COMPLAINT (CLASS ACTION)

- 17 1) Recission of Contract
- 18 2) Unlawful/Void Contract for Sale of
Legal Services
- 19 3) Violation of California Civil Code §
1750 *et seq.*
- 20 4) Violation of Business and
Professions Code § 17500 *et seq.*;
- 21 5) Violation of Texas Deceptive Trade
Practices – Consumer Protection Act
- 22 6) Violation of Business and
Professions Code § 17200 *et seq.*;

23 (JURY TRIAL DEMANDED)

24 Plaintiff Jeffery DeLong (hereinafter "Plaintiff" or "DeLong"), brings this
action, by and through his undersigned counsel, on behalf of himself and all others
25 similarly situated persons in the class defined below, based upon information and
belief and the investigation of counsel, except for information based upon personal
knowledge, and hereby alleges as follows:

1 rise to the claims in this action occurred in this District. Each Defendant has
 2 sufficient minimum contacts in the State of California or otherwise intentionally
 3 prevails itself of the California market through television, radio and internet
 4 advertising located in California and other activities, so as to render the exercise of
 5 jurisdiction over it by the California courts consistent with traditional notions of fair
 6 play and substantial justice.

7 III. THE PARTIES

8 4. Plaintiff Jeffery DeLong is an adult individual who resides in the State
 9 of California, County of Mendocino. Plaintiff DeLong has a physical impairment
 10 that substantially limits one or more major life activities and is a "disabled person"
 11 as that term is defined by Cal. Bus. and Prof. Code § 17206.1(b)(2).

12 5. At all relevant times, DeLong was a customer of Defendants
 13 TaxMasters, Inc., a Nevada corporation and/or TMIRS Enterprises, Ltd., a Texas
 14 partnership. As a result of Defendants' unlawful and unconscionable conduct
 15 described further herein, suffered harm, injury and loss in an exact amount to be
 16 proven at trial. Since Plaintiff was harmed and suffered out of pocket loss in a
 17 manner typical of the Class, as confirmed by the recent actions taken by the Attorney
 18 Generals of several states against Defendants, including Texas and Minnesota, he
 19 brings this action as a class action.

20 6. Upon information and belief, TaxMasters, Inc. is a publicly traded
 21 (NASDAQ: TAXS) Nevada corporation with its principal place of business located
 22 at 900 Town & Country Lane, Suite 400, Houston, TX 77024. The agent for service
 23 of process is Residential Agency National, Incorporated, 377 S. Nevada Street,
 24 Carson City, NV 89703.

25 7. Upon information and belief, TMIRS Enterprises, Ltd., is a Texas
 26 partnership with its principal place of business located at 900 Town & Country Lane,
 27 Ste. 400, Houston, TX 77024. Defendant TMIRS affairs are directed and controlled
 28

1 by TM GP Services, LLC, its General Partner. TM GP Services, LLC is a Texas
2 limited liability company doing business throughout the United States, including
3 Pennsylvania, with a principal place of business at 900 Town & Country Lane, Suite
4 # 400, Houston, TX 77024 GP Services, LLC is a Texas limited liability company
5 doing business throughout the United States, with a principal place of business at
6 900 Town & Country Lane, Suite # 400, Houston, TX 77024

7 8. Defendants unjustly profit from the activities challenged in this lawsuit.
8 For instance, in its 2009 annual report, Defendants reported annual revenue of
9 approximately \$36.8 million.

10 9. Plaintiff is informed and believes that Defendants regularly conduct
11 business in the State of California directly or indirectly through subsidiaries owned,
12 licensed, operated, administered, managed, directed and/or controlled in the State of
13 California.

14 10. Upon information and belief, the services Defendants provide class
15 members are performed at their offices, in Houston Texas. The deceptive,
16 unconscionable and unfair business practices that Defendants engage in and
17 complained of herein are conducted in and from their primary business offices in
18 Houston, Texas and emanate to other states where class members reside, including
19 California, injuring those class members. Defendants are obligated to comply with
20 Texas law with regard to operations and business practices they conduct in and from
21 Texas, even if those services affect and injured consumers outside of Texas. In
22 addition, Defendants are also obligated to comply with the laws of the states where
23 they conduct business and contract with consumers, such as California.

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IV. INTENT

11. Defendants knowingly and intentionally undertook and directed that their respective businesses undertake the illicit practices which are the subject of this suit.

12. Acting in concert, Defendants have undertaken a common scheme to systematically and intentionally ensnare and deceive unsuspecting and financially vulnerable consumers, like Plaintiff, who at relevant times owed the IRS unpaid taxes and sought to address their tax problems, by systematically:

- a. promising to eliminate class member's outstanding tax debts and obligations to the IRS;
- b. establishing a "payment plan" for their services;
- c. obtaining the consumers' credit card information, instantly charging monies against it;
- d. failing to disclose hidden fees and other material terms at the time of contracting and receiving payment;
- e. refusing to provide the required 30 day right of rescission / cancellation with full refund required for telephone and internet sales;
- f. then, only after receiving "non-refundable" payments from class members, altering and adding contractual terms and;
- g. engaging in illegal collection services to pursue monies the Defendants deem are owed by class members - even when services have yet to be performed.

IV. FACTUAL ALLEGATIONS

A. Defendants Regularly Advertise in Order to Induce Potential Customers to Seek Their Counsel for Tax Liability Issues.

13. Defendants are in the business of performing tax relief services to individuals with federal and state tax debt problems and liabilities.

1 14. Defendants do not have any "brick and mortar" stores to transact
2 directly with consumers. Instead, Defendants advertise on television, radio and
3 internet markets both nationwide and throughout the State of California in order to
4 reach prospective consumers and to induce them into contacting Defendants via
5 telephone or internet concerning their tax liability problems.

6 15. Defendants utilize advertisements on national television and the internet
7 (www.txmstr.com) that invite the consumer to solve their tax problems by calling
8 TaxMasters' telephone number for a "free consultation" with a tax consultant. *See*
9 *e.g.* www.txmstr.com.

10 16. Consumers who accept the invitation and call TaxMasters' toll free
11 number are connected to a telephone sales representative who proposes a solution to
12 the consumer's tax problems and then closes the deal by obtaining the consumers'
13 credit card or bank account information without providing several material
14 disclosures, including that the fees paid by the consumer will be immediately treated
15 as non-refundable. *See Affidavit of Denise Miranda and Transcript of Telephone*
16 *Sales Call Between Defendants and Denise Miranda ("Miranda Affidavit")*, attached
17 hereto as Exhibit "B".

18 17. Defendants operate what they describe as a 'tax resolution' firm, aimed
19 at the market of taxpayers who have received an audit notice, a notice of tax
20 deficiency, or are otherwise in some difficulty with the IRS. Essentially TaxMasters
21 offers to act as the taxpayers' agent in his/her dealings with the IRS. Although
22 TaxMasters claims that it "employ[s] and use[s] the expertise of ... tax attorneys
23 [and] tax CPAs," it says that it "is not a law firm or a CPA firm." According to
24 TaxMasters, it provides the following tax-related services, among others (a) stopping
25 IRS wage garnishments, (b) stopping IRS property seizures:, (c) assistance with
26 paying back taxes, (d) settlement of consumers' tax debts by reducing the amount of
27 interest and penalties, (e) handling disputes in tax court. The services that

1 Defendants sell class members require legal judgment and advice to perform. *See*
2 *attached Exhibit "B"* (Miranda Affidavit).

3 18. The image and words of Patrick R. Cox, the President and Chief
4 Executive Officer of TaxMasters, Inc., appear in the numerous TaxMasters television
5 commercials and on the TaxMasters website, where he introduces himself as the
6 founder of TaxMasters. He represents that TaxMasters will "get between" the IRS
7 and the consumer, and will "solve" the consumer's tax problem. He says that former
8 IRS agents, attorneys and other tax professionals are standing by to assist and advise
9 the consumers with their tax problems.

10 19. TaxMasters runs commercials which air frequently on network and
11 cable television including MSNBC, CNN and Fox News, and on the internet.
12 Customers who call the toll-free number featured in TaxMasters' advertisements are
13 connected with an inside salesperson who is not required to have any previous tax
14 knowledge, as a condition of employment, but rather is encouraged to have a
15 thorough understanding of the sales process and how to close a sale. During the
16 sales pitch, the salesperson presents the caller with a solution to his tax problem --
17 one of the services offered by TaxMasters -- and quotes a fee, which can run into
18 thousands of dollars. The fee is generally presented as a flat fee.

19 20. During the "free consultation" call, which is the initial call between a
20 consumer and TaxMasters, the tax consultants work to "close the sale" by obtaining
21 a credit card number or bank account from the consumer so that TaxMasters can
22 collect its fee. To this end, TaxMasters' sales personnel emphasize the necessity of
23 promptly retaining TaxMasters in order to solve the consumer's tax problem. If the
24 consumer asks to receive a written description of the service prior to agreeing to
25 purchase TaxMasters' services, the salesperson refuses, telling the consumer that it is
26 not possible to generate the documents without first inputting a payment method into
27 the TaxMasters system. *See attached Exhibit "B"* (Miranda Affidavit).

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1 21. The fees that TaxMasters charge for its services are large, typically
2 ranging from \$1,500.00 to \$10,000.00 or even more. If the consumer cannot afford
3 to pay the fee in whole, or if the consumer balks at agreeing to pay such a large
4 amount without seeing written terms, the 'tax consultant' offers the consumer an
5 installment plan to pay the TaxMasters fee. The consumer is usually required to
6 agree to a down payment of at least \$500.00, or 25% of the total fee, whichever is
7 greater.

8 22. When the consumer agrees to retain TaxMasters and to make payment
9 in full or payment via an installment plan, the tax consultant then turns the
10 consumer's telephone call over to another member of the TaxMasters sales team, the
11 "verifier" who tells the consumer what a good decision he/she has made and reviews
12 the payment plan to which the consumer has agreed. Neither the original consultant
13 nor the verifier discloses to the consumer that it is TaxMasters' position that the
14 consumer is now irrevocably bound to pay the initial fee and any future installments
15 before the consumer has signed any written engagement letter or received any
16 services from TaxMasters or that he/she has waived any claims. *See attached*
17 Exhibit "B" (Miranda Affidavit).

18 23. After the call is ended, before TaxMasters sends the consumer any
19 written materials or contract, TaxMasters charges the consumer's credit card, or
20 debits the consumer's bank account, for the amount of the whole fee or down
21 payment. Taxmasters *then* sends a letter to the consumer, along with the IRS form
22 appointing TaxMasters as the consumers' agent, an engagement agreement, and
23 engagement guide. The letter instructs the consumer to immediately sign the
24 engagement agreement and IRS forms and return them to TaxMasters.

25 24. The engagement agreement is a multi-page standard-form document
26 that contains numerous previously undisclosed terms and conditions printed in small
27 type. *See, Plaintiff-Defendants Engagement Agreement, appended as Exhibit "A"*

1 hereto. Upon information and belief, the same or substantially similar form
2 engagement agreements were used in each class members' transaction. As described
3 above, these previously undisclosed terms and conditions materially and
4 substantively limit and change the services as described by TaxMasters during the
5 initial sales call with the consumer. Since the contract was formed when the
6 payment was made, the subsequently disclosed written terms alter the contract
7 without valid consideration and are void, unconscionable and unenforceable.

8 25. One of the terms disclosed for the very first time in the engagement
9 agreement (but after the consumer has paid Defendants) involves the cancellation of
10 the agreement by the consumer and the consumer's right to receive a refund. This
11 disclosure reads as follows:

12 Client's Early Termination Agreement

13 Client may terminate this agreement at Client's discretion by providing
14 Client's notice in writing to Firm. In the event of termination by client,
15 the minimum professional fees due for services rendered or to be
16 rendered will be the higher figure of: (1) the minimum total retainer
17 specified above and the actual fee for any other services performed - or-
18 (2) the actual time expended by Firm at standard billing rates, If Client
has paid more than then minimum fee as determined herein, a refund
will be paid. Client agrees to remit any balance in full with its
termination notice or to permit any remaining balance to be drafted in
full using the payment method established in the installment agreement.

19 See attached Exhibit "A" (Plaintiff's Engagement Agreement). TaxMasters does not
20 routinely provide this disclosure to consumers during the sales calls.

21 26. TaxMasters takes the position that its fees are binding and are
22 immediately non-refundable whether the consumer has signed the engagement
23 agreement or not and regardless of whether any services have been provided to earn
24 any portion of the fee. Consumers who have called TaxMasters to cancel within 24
25 hours after the initial sales call have been told that TaxMasters will not refund any
26 portion of the money paid, even though TaxMasters has provided no services at that
27 point, and, indeed, cannot begin working on the consumer's behalf until the
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1 consumer has returned the IRS form appointing TaxMasters as his representative.
2 *See attached Exhibit "I" (Defendants' Correspondence Denying Consumer Refund).*

3 27. Taxmasters not only refuses to refund the fees already collected by it
4 after the sales call, it also attempts to continue to collect fees from consumers who
5 cancel their agreements, even when no services have been provided to earn any
6 portion of the fee. In fact, the Defendants have threatened to subject consumers to
7 collection procedures in court if they refuse to pay fees after the consumer has
8 cancelled the agreement, regardless of whether any services have been performed.
9 In attempting to collect these fees, TaxMasters has threatened to bring suit to collect
10 such fees in court in Harris County, Texas, even though the consumer is not a
11 resident of Harris County and did not sign the contract on which the alleged debt is
12 based in Harris County. Such terms and tactics are unlawful, lack mutuality, are
13 unconscionable and violate Tex Bus. and Com. Code section 17.46(b)(23) and /or
14 other law. *See attached Exhibit "J" (Defendants' Collection Correspondence).*

15 28. Further, on its website and during the sales call, TaxMasters represents
16 that it will begin working on the consumer's tax problem as soon as the consumer
17 purchases the services from TaxMasters. According to the engagement agreement,
18 which is only sent after the initial fee has been paid, however, TaxMasters does not
19 have to begin working on the consumer's tax problem until the consumer has paid the
20 TaxMasters fee in full. Therefore, when an installment plan is involved, it may take
21 months before the Defendants begin work on a consumer's file and the only notice
22 that consumers on an installment plan receive about this policy is information that is
23 included in the engagement agreement, as this issue is not disclosed to consumers
24 during the sales call. *See Affidavit of Karen Sanchez, attached hereto as Exhibit*
25 *"D".*

26 29. The contract between Defendants and the consumer class member is
27 formed when Defendants demand and receive the initial payment from the consumer
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1 during this process. Only after the class member has entered into a contract with
2 Defendants and provided payment based on the terms then-disclosed do Defendants
3 send the consumer a written contract altering the contract, disclosing new, different
4 and additional terms, without providing additional consideration. If a consumer
5 upon receiving the written contract attempts to reject the newly disclosed terms set
6 forth in the written document, Defendants claim that the consumer is already
7 contractually bound and that it is entitled to keep all fees despite the fact no work has
8 been done or services performed to earn the fee. Thus, consumers are under
9 financial duress and have no choice but to go forward or else they risk losing the
10 entire fee paid (plus any future scheduled installment payments to be debited from
11 their accounts) without receiving any tax relief services in exchange. As such, the
12 contracts are unconscionable, unlawful, void, unenforceable and should be rescinded.

13 30. In the initial sales call, TaxMasters' representatives misrepresent and
14 fail to disclose important aspects of TaxMasters' service and the terms on which they
15 are offered, including, the fact that TaxMasters treats all fees paid as non-refundable;
16 the fact that TaxMasters will not begin working on a client's case until he/she has
17 paid all of the installment payments agreed to; that additional charges (at rates up to
18 \$950.00 per hour) may be imposed at Defendants discretion when they subjectively
19 feel the undisclosed "budgeted time" and hourly rates allocated to the initial fee
20 previously paid is exhausted; that Defendants alone may unilaterally terminate the
21 agreement "without refund" (even if services are never performed) should they
22 subjectively feel the client is uncooperative or "abusive;" that the work will actually
23 not be performed by Defendants but be subcontracted to other undisclosed persons or
24 entities to perform and for which the class member waives important rights to
25 proceed against; that all disputes the class member has against Defendants are
26 limited and must be arbitrated in Houston, Texas while Defendants, in contrast,
27 retain their right to sue the class member in a state or federal court of their choosing
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1 with no limitation on claims or recoveries. *See Exhibit "B"* (Miranda Affidavit), at
 2 pp. 40 - 41. Such terms are unconscionable, unlawful, void, lack mutuality and are
 3 unenforceable.

4 **B. Defendants Overstate Their True Ability To Reduce Class Members' Tax
 5 Obligations**

6 31. Defendants, through their various advertisement schemes and website,
 7 seek out consumers who are in dire financial condition, and those consumers who
 8 face possible immediate action by the Internal Revenue Service ("IRS"). The
 9 company makes a number of representations to entice such consumers to retain them
 10 and have consumers immediately allow Defendants to charge their credit cards
 11 before receiving the written contract, including:

- 12 a. "The former IRS agents and tax professionals at TaxMasters will solve
 13 your tax problems."
- 14 b. "We'll get between you and the IRS."
- 15 c. "We'll make sure they treat you fairly, and treat you with respect."
- 16 d. "Don't wait weeks for an appointment, call us today. We'll get you
 17 started today."
- 18 e. "TaxMasters—we solve your tax problems."
- 19 f. The "IRS makes the rules and then apparently trains its employees to
 20 break them."
- 21 g. The IRS will not treat consumers "fairly" or with "respect" if they
 22 attempt to represent themselves.
- 23 h. "Relief from substantial federal tax debt is achievable and is even easier
 24 with TaxMasters than you might think."
- 25 i. TaxMasters' staff is composed of former IRS agents, enrolled agents,
 26 tax attorneys and CPAs with tax expertise.

- 1 j. "From the moment you give our tax consultant the go-ahead on the
- 2 phone, we start working for you."
- 3 k. TaxMasters is dedicated to quality client services, and "will do
- 4 everything in our power and within the limits of the law to help you
- 5 achieve tax relief."
- 6 l. "Whether facing tax debt, unfiled returns, wage garnishment, or an IRS
- 7 audit, TaxMasters can solve your tax problem."]

8 32. The Better Business Bureau of Houston Texas, which is where the
 9 Defendants base their business operations, has given TaxMasters an "F" rating, and
 10 has received hundreds of complaints in the last three years. Additionally, the
 11 Attorneys General of a number of states, including Texas and Minnesota have
 12 recently filed actions challenging Defendants' deceptive sales practices. *See e.g.*
 13 *Swanson v. Taxmasters, Inc.*, Hennepin County (Minnesota) District Court, Fourth
 14 Judicial District, Case No. 27-CV-10-28133 (Filed December 16, 2010); *State of*
 15 *Texas v. Taxmasters, Inc., TMIRS Enterprises, Ltd., TM GP Services LLC, d/b/a/*
 16 *Taxmasters and Patrick R. Cox*, D-1, GV-10-000486, Travis County, Texas, District
 17 Court. According to the Minnesota Attorney General:

18 "The company gets worried people to pay thousands of dollars by
 19 overstating the help it will provide with their tax bills," said Attorney
 20 General Swanson. "This is the latest type of company we have seen
 target the misfortunes of people who are facing tough sledding in the
 bad economy."

21 The lawsuit alleges that the company got consumers to pay advance fees
 22 of \$2,000 to \$8,000 by misstating the help it would provide people with
 23 unpaid tax bills. In some cases, the company claimed it could
 substantially reduce people's tax bills by up to 90 percent, but then
 delivered little or no help. In other cases, the company falsely promised
 24 that it could stop IRS collection efforts against consumers who hired it.

25 Contrary to TaxMasters' promises, most citizens do not qualify for
 26 special IRS programs that reduce a person's tax debt. Attorney General
 27 Swanson said that while the IRS won't reduce most people's tax bills, it
 28 will work with them on repayment plans-something people can do on
 their own without paying a tax relief company thousands of dollars.

1 TaxMasters heavily advertises on late-night television. In 2009 the
 2 company spent nearly \$14 million on its television, radio and Internet
 3 advertising campaigns. Consumers who call TaxMasters talk to a "tax
 4 consultant," who is actually a salesperson. A job ad for this position
 5 states: "Previous tax knowledge is not required, but a firm
 6 understanding of the sales process and of selling services ... is a strong
 7 plus." Salespeople often make unrealistic promises of the company's
 8 ability to help in order to dupe consumers into paying thousands of
 9 dollars in advance fees. The company also falsely told some consumers
 10 it could put an immediate stop to collection efforts, such as wage
 11 garnishments, levies, or liens. The lawsuit alleges that TaxMasters
 12 sometimes left people in worse financial shape after paying the
 13 company's advance fees, failing to respond to important deadlines or
 14 requests of tax authorities.

15 * * *

16 The lawsuit alleges that Taxmasters salespeople told consumers things like:

17

- 18 • "... based upon our success rate and our experience, on average, our clients see
 19 a savings of anywhere between 80 and 90% of what the IRS claims they owe."
- 20 • "We're highly successful; we are the most successful tax resolution company.
 21 We're 97% successful."
- 22 • "We'll save you anywhere from 65 to 90% is our goal on ... savings off the
 23 total tax debt. 97% of the time we reach that goal, the other 3% are the people
 24 who just flat out lie to us."

25 See Office of Minnesota Attorney General, Press Release, December 16, 2010.
 26 Other examples of Defendant's deceptive sales practices are evident in the Transcript
 27 of the initial free consultation between Denise Miranda, attached hereto as Exhibit
 28 "B" at pp. 8, 12, 24-25, and 40-41, where Defendants claim that the staff tax
 attorney, who's services Defendants sell, has never lost a case.

29 This is definitely something we can help you out with. One of our, in
 30 fact our main audit attorney, his name is Clyde Miller, you'll be, you'll
 31 be glad to know he's never lost a case.

32 * * *

33 So you're looking at \$6,500 for us to take over the case and get all this
 34 taken care of. Now, again, I stress to you that, that Clyde Miller has
 35 never lost a case. --.

36 * * *

37 ...and we don't typically take on case that we know we're, that we
 38 know we can't win.

39 * * *

40 Because what we're going to do is tie, we're going to tie it up in
 41 litigation as long as we can.

1 33. During the initial "free consultation" call, Defendants overstate their
 2 services and true ability to eliminate people's tax obligations to the class.
 3 Defendants engage in such activities in order to push sales and maximize their
 4 profits, to class members' financial detriment. *See Affidavit of Crespin Gonzales,*
 5 attached hereto as Exhibit "E".

6 34. Upon information and belief, over the last four years, over 200
 7 California consumers (and many more nationwide as evidenced by Defendants' sales
 8 figures set forth below) have retained TaxMasters during similar initial "free
 9 consultation" calls to "solve [their] tax problems."

10 **C TaxMasters Makes Money By Aggressively Booking Consumer Sales
 11 Contracts Through "Free Consultations" with a Sales Person.**

12 35. TaxMasters primarily earns revenue by charging consumers to prepare
 13 and amend tax returns, negotiate tax settlements, and handles IRS audits and
 14 collection cases.

15 36. Taxmaster's advertisements and website offer consumers "free
 16 consultations." In truth, this is nothing but a scheme to connect vulnerable class
 17 members facing legal problems with an aggressive sales person changed only with
 18 closing a sale and collecting an immediate fee, not providing the consumer any
 19 meaningful tax "consultation" from a qualified professional.

20 37. When consumers agree to retain TaxMasters during the initial sales call,
 21 its sales people ask them to pay the company's large fees in advance. These fees
 22 typically range from \$1,500.00 to \$10,000.00 or more. Although many of these
 23 consumers are already experiencing financial difficulties, TaxMasters' salespeople
 24 ask them to empty their checking and savings accounts, borrow the amounts
 25 required, or charge its fees on high-interest credit cards. If TaxMasters cannot get
 26 full payment in advance, its salespeople collect the large amount available as a
 27 "down payment," and place consumers on installment plans.

1 38. The skill of TaxMasters' sales staff in extracting large, up-front fees
2 from consumers is reflected in the company's extraordinary revenue growth in the
3 last four years. For 2007, TaxMasters reported revenues of \$6.5 million. For 2008,
4 its revenues grew by 132% to \$15.1 million. For 2009, its revenues grew by 131.1%
5 to 36.8 million. For the first nine months of 2010, when compared to the same
6 period in 2009, TaxMasters' revenues grew by 21.8% to 32.8 million. Patrick Cox
7 noted in a November 17, 2010 press release that "We have implemented extensive
8 advertising campaigns in the media most followed by our customers and we
9 anticipate this will translate into higher revenue in the upcoming quarters."

10 39. As TaxMasters' revenues have increased, so has the number of its
11 employees. In 2006, the company employed 15 people, in 2007 it employed 101
12 people, by the start of 2009 it employed 210 people, and it currently employs over
13 300 people. TaxMasters' management has expressed plans to continue expanding
14 TaxMasters staff in coming years.

15 40. In March 2010, TaxMasters told investors that the "driving factor for
16 assessing success at TaxMasters is both total revenue and newly booked sales
17 contracts that will become future revenue." Further, TaxMasters states on its website
18 that "[t]he largest growth driver for TaxMasters has been the increasing number of
19 taxpayers who have issues dealing with the IRS and who are out of tax compliance.
20 The recession and rising unemployment has increased the number of at-risk
21 Americans, those who are most likely to have the severe financial difficulty that
22 causes problems meeting IRS obligations."

23 41. TaxMasters' focus on booking new sales contracts is apparent from its
24 solicitation in the "help wanted" section of its website for "talented closers" to work
25 as Tax Consultants—Inside Sales Representatives. Such tax consultants will
26 purportedly utilize their tax expertise to recommend services appropriate to resolve
27 consumers' tax problems. It is plain from TaxMasters' solicitation, however, that the
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1 focus of the tax consultant position is closing sales contracts rather than advising
2 consumers appropriately about tax issues. At relevant time, TaxMasters' solicitation
3 enticed potential sales employees with the promise that:

4 Salespeople search years to find an inside sales job as sweet as this.
5 The leads come to you qualified and ready to bite. All you have to do
6 is what you were born to do. Take the caller through a custom
solution based on TaxMasters sound and proven service offerings and
convert qualified prospects to closed deals.

7 It further provides that although "[p]revious tax knowledge is not required," an "[in]
8 depth understanding of effective closing techniques practiced to an art form are
9 required." *See Defendants' Hiring Advertisement*, attached hereto as Exhibit "R".

10 42. These "consultants" are the people who provide the "free consultation"
11 offered to consumers on Defendants' website and advertising. Callers who dial
12 Taxmaster's toll-free phone number do not receive any actual "consultation" on tax
13 issues at all. Instead, all they receive is a sales pitch from a salesperson charged with
14 closing a sale and who is unqualified to provide any meaningful tax "consultation."
15 *See Exhibit "B"* (Miranda Affidavit).

16 43. Defendants' offer of a "free consultation" is misleading, deceptive,
17 unfair and false.

18 **D. TaxMasters Utilizes "Bait and Switch" Tactics, Charging Consumers
19 Large, Up-front Fees Before Giving Them a Copy of the Engagement
20 Agreement Contract.**

21 44. As noted above, TaxMasters collects full or partial payment from
22 consumers at the time of the initial sales call with the "consultant." It does so before
23 giving consumers a copy of the Engagement Agreement that it requires them to
24 execute and return. TaxMasters does not e-mail or fax a copy of its Engagement
25 Agreement to consumers until after it has completed the sales call and processed the
26 payment.

1 45. TaxMasters utilizes its "third-party" verification system to bind
2 consumers to payment for TaxMasters' services whether the consumers return an
3 executed copy of the contract or not. If after receiving a copy of the Engagement
4 Agreement, the consumer decides they do not want to enter into a contractual
5 relationship with TaxMasters on the terms stated and refuse to execute and return it,
6 TaxMasters refuses to refund the money these consumers have paid on the basis that
7 they have verbally agreed to pay TaxMasters its fee.

8 46. As described above, terms in the Engagement Agreement contradict
9 representations made by TaxMasters' salespeople during the telephone consultation
10 when payment is made.

11 47. Taxmaster's refusal to provide class members who have contracted with
12 it over the telephone and internet any cancellation or recission period violates
13 applicable law.

14 **E. Plaintiff Jeffery DeLong's Transaction with Defendants**

15 48. On October 20, 2008, Plaintiff Jeffery DeLong called Taxmasters'
16 Houston, Texas offices via telephone for a free consultation regarding a tax dispute
17 he had with the IRS pertaining to taxes claimed due by the IRS for tax year 1997.
18 Plaintiff spoke with "tax consultant" James Arline at Taxmasters' offices in Houston.

19 49. During the telephone call between Plaintiff and Arline on October 20,
20 2008, Plaintiff entered into a contract with Taxmasters for tax relief services.
21 During that call Plaintiff agreed to pay Taxmasters \$3,000.00 in full for their services
22 and in turn, provided Taxmasters authorization to charge his Visa ATM/check card
23 in that amount.

24 50. At the time, Taxmasters had not yet provided Plaintiff any written
25 Engagement Agreement or other documents. Plaintiff was told he could not receive
26 the written contract until he had first authorized payment. Only after the
27 aforementioned telephone call ended did Plaintiff receive the written engagement
28

1 agreement and other documents from Defendants via fax. *See* Defendants' 2 Engagement Correspondence to Plaintiff, attached hereto as Exhibit "K".

3 51. On October 20, 2008 and prior to returning any forms or agreements, 4 Plaintiff e-mailed Arline asking that he email Plaintiff back "if the terms have been 5 modified since our discussion, prior to payments being made." Arline did not 6 respond. *See attached* Exhibit "L".

7 52. On October 21, 2008, Plaintiff returned the executed engagement 8 agreement.

9 53. Plaintiff then discovered that the original terms discussed with Arline 10 during the initial consultation had been altered, including that the \$3,000.00 paid 11 may no longer be payment in full for Taxmasters' services. Had these terms been 12 made clear to Plaintiff before authorizing payment, he would not have entered into 13 the contract and paid Taxmasters any money.

14 54. On October 24, 2008, Plaintiff notified Taxmasters in writing via e-mail 15 to james.arline@txmstr.com and info@taxmastr.com to suspend all activities, to 16 cancel the contract, and provide a full refund of any and all funds received. At that 17 point, no services had yet been provided to Plaintiff by Taxmasters to earn any fee. 18 To ensure delivery, Plaintiff printed out the same e-mail and faxed it to Arline at 19 Defendants' fax number that day. *See attached* Exhibit "N". Plaintiff also revoked 20 the IRS Power of Attorney he had previously granted to Defendants by e-mail on 21 October 24, 2008 by e-mail and facsimile. *See attached* Exhibit "O".

22 55. Instead of agreeing to cancel the contract, on November 6, 2006 23 Plaintiff received a package from Taxmasters' offices in Texas notifying him that 24 Taxmasters was proceeding with the contract. The package was postmarked 25 November 3, 2008, yet the letter was backdated to October 23, 2008. *See attached* 26 Exhibit "M". On November 6, 2008, Plaintiff sent a letter to Taxmasters offices in 27 28

1 Houston, Texas, via certified mail, confirming this. That certified letter was received
2 by Defendants in Houston on November 7, 2010. *See attached Exhibit "P".*

3 56. On or about October 27, 2008, Plaintiff complained to the Better
4 Business Bureau in Houston Texas and his bank regarding his dealings with
5 Defendants and Defendants' deceptive conduct and practices.

6 57. Taxmasters refused to return the \$3,000.00 Plaintiff paid them.

7 58. While eventually Plaintiff received credit from his bank of the \$3000
8 that Taxmasters refused to refund directly, he has nevertheless, incurred out of
9 pocket loss as a result of Defendants' unlawful and deceptive conduct complained of
10 herein, including but not limited to payment for facsimile costs, certified mailing
11 costs, printing, other transaction costs and lost interest on his money. *See attached*
12 *Exhibit "Q".*

13 **V. CLASS ACTION ALLEGATIONS**

14 59. This action is brought as a class action and may properly be so
15 maintained pursuant to Fed. R. Civ. P. 23 and other applicable rules of civil
16 procedure. This action seeks recovery of actual damages, restitution,
17 injunctive and equitable relief arising from Defendants' unfair business
18 practices.

19 60. **Class Definition:** The Class sought to be represented in this action is
20 defined as follows:

21 All persons residing in California who, during the Class Period,
22 contracted with TaxMasters for services and paid TaxMasters money
23 during an initial telephone consultation. (hereinafter, the "Class").

24 The Class Period dates back four years (or the length of the longest
25 applicable statute of limitations for any claim asserted) from the date this action
26 was commenced and continues through the present and the date of judgment.
27 Excluded from the Class are: (a) any officers, directors or employees of the
28 Defendants; (b) any judge assigned to hear this case (or spouse or family member

1 of any assigned judge); (c) any employee of the Court; (d) any juror selected to
2 hear this case.

3 **61. Numerosity of the Class.** Members of the class and subclass
4 are so numerous that their individual joinder herein is impracticable. The
5 precise number of members of the class and subclass and their addresses are
6 presently unknown to Plaintiff, but is believed to each exceed 500 people.
7 The precise number of persons in the class and their identities and addresses
8 may be ascertained from Defendants' records. If deemed necessary by the
9 Court, members of the class may be notified of the pendency of this action
by mail and/or email.

10 **62. Ascertainable Class.** The proposed Class is ascertainable. The
11 litigation of the questions of fact and law involved in this action will resolve the
12 rights of all members of the Class and Subclass and hence, will have binding effect
13 on all class members. These Class Members can be readily identified from business
14 records, billing systems, and telephone records of the Defendants and other means
15 readily available to the Defendants, and thus by the Plaintiff, through minimally
16 intrusive discovery. The class is numerous. Joinder of all class members is
17 impracticable due to the relatively small monetary recovery for each class member
18 in comparison to the costs associated with separate litigation and likelihood that
19 due to the nature of the underlying tax disputes that class members faced when
20 initially contacting Defendants, class members are financially strapped.

21 **63. Common Questions of Fact and Law Exist and Predominate
22 over Individual Issues.** There is a well-defined community of interest in
23 the questions of law and fact involved affecting the parties to be
24 represented. These common questions of law and fact exist as to all
25 members of the class and predominate over the questions affecting only
26 individual members of the class. These common legal and factual questions
27 include without limitation:
28

- 1 a. whether Taxmasters altered and/or breached class members contracts by
2 changing and/or adding terms after receiving the initial payments,
3 without consideration;
- 4 b. whether TaxMasters failed to provide class members the required
5 revision period under Bus. & Prof. Code § 17528.
- 6 c. whether TaxMasters falsely and deceptively represented, marketed
7 and/or advertised that it provided "free consultations;"
- 8 d. whether TaxMasters sells legal services and advice and as such, has
9 engaged in the unauthorized practice of law, rendering any contract
10 void;
- 11 e. whether TaxMasters engages in illegal, unfair, deceptive, misleading,
12 unconscionable, unlawful or fraudulent business practices prohibited by
13 the CLRA and/or the UCL;
- 14 f. whether the Class is entitled to an accounting, restitution, disgorgement,
15 damages and/or other relief due to Defendants' violations as described in
16 this Complaint; and
- 17 g. whether an injunction is necessary in order to prevent Defendants from
18 continuing to engage in illegal activity.

19 64. **Typicality.** The claims of Plaintiff DeLong are typical of the
20 claims of the Class. Plaintiff and all Class members contracted with
21 TaxMasters to reduce their tax liability during the Class Period. Plaintiff and
22 all Class members paid a substantial up-front fee, only to have the contractual
23 terms altered. Plaintiff and all Class members have been the subject of Defendants'
24 unfair, illegal, fraudulent and deceptive business practices as described herein. The
25 relief sought is common, unitary, and class-wide in nature.

26 65. **Adequacy.** Plaintiff is an adequate representative of the Class on
27 whose behalf this action is prosecuted. Plaintiff's interests do not conflict
28 with the interests of the Class. Plaintiff has retained competent counsel with

1 experience in class action litigation and will prosecute this action
2 vigorously. As a result, Plaintiff can fairly and adequately represent and protect
3 the interests of the class in that there are no conflicts between their interests and the
4 interests of other class members, this action is not collusive, the named Plaintiff
5 and her counsel have the necessary resources to litigate this action, and counsel has
6 the experience and ability required to prosecute this case as a class action.

7 **66. Community of Interest.** The proposed Class has a well defined
8 community of interest in the questions of fact and law to be litigated. The common
9 questions of law and fact are predominant with respect to the liability issues, relief
10 issues and anticipated affirmative defenses. The named Plaintiff has claims typical
11 of the Class members.

12 **67. Superiority of Class Adjudication.** The certification of a class in this
13 action is superior to the litigation of a multitude of cases by members of the
14 putative class. Class adjudication will conserve judicial resources and will avoid
15 the possibility of inconsistent rulings. Equity dictates that all persons who stand to
16 benefit from the relief sought herein should be subject to the lawsuit and hence
17 subject to an order spreading the costs of the litigation among the class members in
18 relationship to the benefits received. The economic damages, restitution and
19 other potential recovery for each individual member of the Class are modest,
20 relative to the substantial burden and expense of individual prosecution of
21 these claims. Given the amount of the individual class members' claims,
22 few, if any, class members could afford to seek legal redress individually for
23 the wrongs complained of herein. Even if the members of the class
24 themselves could afford individual litigation, the court system could not.
25 Individualized litigation presents a potential for inconsistent or contradictory
26 judgments. Individualized litigation increases the delay and expense to all
27 parties and the court system presented by the complex legal and factual
28 issues of the case. By contrast, the class action device presents far fewer

1 management difficulties, and provides the benefits of single adjudication,
2 economy of scale, and comprehensive supervision by a single court.

3 68. In the alternative, the above-referenced class may be certified
4 because:

- 5 a. The prosecution of separate actions by the individual members
6 of the Class would create a risk of inconsistent or varying
7 adjudication with respect to individual class members' claims
8 which would establish incompatible standards of conduct for
9 Defendants;
- 10 b. The prosecution of separate actions by individual members of
11 the Class would create a risk of adjudications which would as
12 a practical matter be dispositive of the interests of other
13 members of the class who are not parties to the adjudications,
14 or which would substantially impair or impede the ability of
15 other class members to protect their interests; and,
- 16 c. Defendants have acted or refused to act on grounds generally
17 applicable to the class, thereby making appropriate final and
injunctive relief with respect to the class.

18 **VI. FIRST CAUSE OF ACTION**

19 **FOR RECISSION OF CONTRACT**

20 69. Plaintiff fully incorporates by reference herein all of the above
21 paragraphs, as though fully set forth herein.

22 70. The contract between Defendants and each class member is formed
23 when Defendants demand and receive the initial payment from the consumer during
24 the initial telephone consultation.

25 71. Only after the class member has entered into a contract with Defendants
26 and provided payment based on the terms then-disclosed do Defendants send the
27
28

1 consumer a written contract disclosing new, different and additional terms, without
2 providing additional consideration. Such terms lack consideration.

3 72. In the initial sales call, TaxMasters' representatives misrepresent and
4 fail to disclose important aspects of TaxMasters' service and the terms on which they
5 are offered, including, the fact that TaxMasters treats all fees paid as non-refundable;
6 the fact that TaxMasters will not begin working on a client's case until he/she has
7 paid all of the installment payments agreed to; that additional charges (at rates up to
8 \$950 per hour) may be imposed at Defendants discretion when they subjectively feel
9 the undisclosed "budgeted time" and hourly rates allocated to the initial fee
10 previously paid is exhausted; that Defendants alone may unilaterally terminate the
11 agreement "without refund" (even if services are never performed) should they
12 subjectively feel the client is uncooperative or "abusive;" that the work will actually
13 not be performed by Defendants but be subcontracted to other undisclosed persons or
14 entities to perform and for which the class member waives important rights to
15 proceed against; that Defendants can sue the Class member for unlimited damaged,
16 but class members can only proceed against Defendants for a maximum recovery
17 equal to 20% of the contracted fee; that all disputes the class member has against
18 Defendants are limited and must be arbitrated in Houston, Texas while Defendants,
19 in contrast, retain their right to sue the class member in a state or federal court of
20 their choosing with no limitation on claims or recoveries.

21 73. Further, Defendants fail to provide the required rescission period under
22 Civ. Code 17538 *et seq.*, but instead treat all fees paid by class members as non-
23 refundable even when no services have yet to be performed. If a consumer upon
24 receiving the written contract attempts to reject the newly disclosed terms in the
25 written document, Defendants claim that the consumer is already contractually
26 bound and that it is entitled to keep all fees despite the fact no work has been done or
27 services performed to earn the fee. Thus, consumers are under financial duress and
28

have no choice but to go forward or else they risk losing the entire fee paid (plus any future scheduled installment payments to be debited from their accounts) without receiving any tax relief services in exchange.

74. As such, the contracts are unconscionable, unlawful, lack mutuality void, unenforceable and should be rescinded. Alternatively, to the extent Defendants attempt to alter the original contract by imposing new terms, they breach the original contract. All fees collected from class members should be refunded, along with all other damages and other relief that may be appropriate, including reasonable attorneys fees and costs.

VII. SECOND CAUSE OF ACTION

(Unlawful /Void Contract For Sale of Legal Services)

75. Plaintiff fully incorporates by reference herein all of the above paragraphs, as though fully set forth herein.

76. Defendants sell legal and other professional services to class members.
See, e.g., Exhibit "B", at pp. 8, 12, 19, 24-25:

This is definitely something we can help you out with. One of our, in fact our main audit attorney, his name is Clyde Miller, you'll be, you'll be glad to know he's never lost a case.

* * *

So you're looking at \$6,500 for us to take over the case and get all this taken care of. Now, again, I stress to you that, that Clyde Miller has never lost a case. --

* * *

...and we don't typically take on case that we know we're, that we know we can't win.

* * *

Because what we're going to do is tie, we're going to tie it up in litigation as long as we can.

* * *

Then we start building a case, while we are putting them, you know, while were stalling them with, you know, tying them up in litigations

1 and everything else and buying as much time as possible. You know,
2 we want to try to stretch this out as long as we can, because what's,
3 what happens here is the auditor it going to get tired of waiting, and
4 he's just going to, he'll either drop the case and say forget about it and
5 move on to the next person, or you know, he'll go ahead and try to
6 follow through with it, in which case, you know, we're, we're more
7 than welcome to invite that, bring it on, in other words. You know,
8 we, by the time, by the time they get done with all the litigation, we'll
9 be ready for the case and have all the proof and documentation that
10 we need, and it's at that point we pretty much just lay it down on the
11 table and say listen, this is what if is, you know, you can scream and
12 moan all you want to about this and that, but we have, right here in
13 black and white, and according to tax article four, section six, you
14 know, this is what's going on, this is the right stuff that we need. We,
15 it's just a matter of knowing the laws and knowing what your rights
16 are, and we do.

17 Like I told you earlier, Clyde Miller has never lost a case. We
18 actually do more audits in one month than most firms do in a year and
19 most tax attorneys do in a lifetime, so audits are one of our main
20 things.

21 77. Defendants contract to serve as class members' agents with regard to
22 legal claims and disputed debts and liabilities.

23 78. Defendants sell class members services which require the provision of
24 professional legal judgment, legal discretion, legal analysis and advice with regard to
25 legal claims and disputed debts and liabilities. *See attached Exhibit "A".*

26 79. While Defendants sell legal services, they are not licensed to practice
27 law in any state. By providing legal judgment, legal discretion, legal analysis and
28 advice with regard to legal claims and disputed debts and liabilities and selecting and
preparing legal instruments and documents, and charging consumers a fee therefore,
Defendants rendered services which cannot lawfully be rendered by a person not
admitted to practice law in the State of California for a fee or other compensation.
Any such contract between Defendants and class members for legal services is
unlawful and void.

80. As a result of the foregoing, all fees collected from class members
should be refunded, along with all other damages and other relief that may be
appropriate, including reasonable attorneys fees and costs.

VIII. THIRD CAUSE OF ACTION
FOR VIOLATION OF *CONSUMER LEGAL REMEDIES ACT § 1750*
(Brought on Behalf of Subclass Only)

81. Plaintiff fully incorporates by reference herein all of the above paragraphs, as though fully set forth herein.

82. Plaintiff brings this action individually, on behalf of the Class, and on behalf of the general public pursuant to § 1750 of the *Consumer Legal Remedies Act*. Plaintiff and the purported class members are “consumers” within the meaning of *California Civil Code* § 1761(d), who purchased goods or services, primarily for personal, family, or household use.

83. Each Defendant is a "person" as defined by *California Civil Code* § 1761(c).

84. Venue is proper pursuant to *California Code of Civil Procedure* § 1780(c) because a substantial portion of the transactions, the subject matter of the above-captioned action, occurred in Los Angeles County.

85. The services described above were bought by Plaintiff and by other consumers similarly situated for tax debt relief, and as such are subject to the requirements of the Consumers Legal Remedies Act and other consumer protection laws of the various states where Plaintiff Class members reside.

86. Plaintiff is informed and believes, and thereon alleges, that TaxMasters intended their misrepresentations and/or advertisements to result in the above-mentioned “bait and switch” tactics, and to receive up-front fees from consumers similarly situated to Plaintiff.

87. Defendants have engaged and continue to engage in deceptive practices, unlawful methods of competition, and/or unfair acts as defined by *California Civil Code* § 1750, *et seq.* to the detriment of Plaintiff and the Class members. Plaintiff and the Class members have suffered, and continue to suffer, harm as a proximate

1 result of the violations of law and wrongful conduct of each and every Defendant as
2 alleged herein.

3 88. Defendants have violated Civil Code §§1770(a)(5), (7), (14) and (19),
4 through the acts alleged herein, thereby entitling plaintiffs and members of the class
5 to relief under Civil Code §1780 by, *inter alia*:

6 a) Representing that goods or services have characteristics which
7 they do not have or that a person has a status, affiliation or connection which he or
8 she does not have, in violation of §1770(a)(5);

9 b) Representing that goods or services are of a particular standard,
10 quality or grade when they are not, in violation of section 1770(a)(7);

11 c) Representing that a transaction confers or involves rights,
12 remedies or obligations which it does not have or involve, or which are prohibited by
13 law, in violation of §1770(a)(14); and

14 d) Inserting an unconscionable provision in a contract, in violation
15 of §1770(a)(19).

16 89. Defendants' violations of Civil Code §1770 described above present a
17 continuing threat to class members and members of the public in that Defendants are
18 continuing to engage in these practices, is continuing to refuse to refund amounts
19 paid by consumers and will not cease until an injunction is issued by the Court.
20 Unless Defendants are enjoined from continuing to engage in these practices,
21 Plaintiff and the members of the Class, who lack an adequate remedy at law to deter
22 Defendant's wrongful conduct, will be irreparably harmed.

23 90. By letter dated **February ---, 2011**, mailed as directed in Civil Code
24 section 1782, Plaintiffs notified Defendants of its violations of the Consumer Legal
25 Remedies Act and demanded that Defendants provide a remedy that rectifies its
26 conduct.

1 91. As a direct and proximate result of the aforementioned acts, Plaintiffs
2 and each member of the class they represent, have suffered injury. Plaintiffs and the
3 members of the class are therefore entitled to injunctive and declaratory relief, an
4 award of attorneys' fees and costs against Defendant pursuant to the provisions of
5 Civil Code § 1780(d).

6 92. In this complaint, Plaintiff and the Class members seek only injunctive
7 and other equitable relief pursuant to Civil Code § 1780(a) and (d). If Defendants
8 fail to give or agree to give within a reasonable time (30 days), a sufficient remedy as
9 set forth in Civil Code section 1782(c) for the above-mentioned violations of law,
10 Plaintiff will amend this complaint to also seek damages.

IX. FOURTH CAUSE OF ACTION

(For Violation of *Business and Professions Code § 17500 et. seq.*)

13 93. Plaintiff fully incorporates by reference herein all of the above
14 paragraphs, as though fully set forth herein.

15 94. Plaintiff fully incorporates by reference herein all of the above
16 paragraphs, as though fully set forth herein.

17 95. Plaintiff brings this action individually, on behalf of the Class, and on
18 behalf of the general public pursuant to *§ 17500 et. seq. of the Bus. & Prof. Code* for
19 Defendants' false advertising practices.

20 96. Defendants' statements, representations, half-truths and failures to
21 disclose as alleged herein were false, misleading, and likely to deceive the General
22 Public, including Plaintiff and other members of the Class.

23 97. Defendants fail to provide any free consultation" as advertised. Rather,
24 only consultation Defenndats provide for free before demanding and receiving
25 payment from a class member is with a salesperson.

26 98. Defendants promise "we solve your tax problems," and overstate their
27 true success rates eliminating clients' tax debts.

1 99. Defendants fail to provide a written contract to the consumer prior to
2 charging fees, and binds the consumer to their oral commitment and payment, only
3 to thereafter provide them with a written contract to the contrary, as described above.

4 100. Defendants violate § 17500 *et. seq. of the Bus. & Prof. Code* by refusing
5 to provide consumers the required cancellation / rescission period required for
6 telephone and internet sales.

7 101. Defendants knew, or in the exercise of reasonable care should have
8 known, that their statements, representations, half-truths and failures to disclose as
9 alleged herein were false and misleading.

10 102. Plaintiff is informed and believes, and upon such information and belief,
11 alleges that the General Public, including Plaintiff and other members of the Class,
12 despite the exercise of reasonable diligence, were likely to be and were deceived by
13 said statements, representations, half-truths and failures to disclose.

14 103. As a result and in reliance upon the above-alleged acts of false
15 advertising, Plaintiff and the other members of the Class were wrongfully deprived
16 of the use and enjoyment of all the monies that TaxMasters promised it could save
17 them.

18 104. The untrue and misleading statements, representations, half-truths, and
19 failures to disclose alleged hereinabove present a continuing threat to members of the
20 General Public in that the acts alleged herein have been continuous and are ongoing,
21 and the General Public will continue to suffer the harm alleged herein.

22 105. Defendants have been unjustly enriched as a result of this wrongful
23 conduct, and Plaintiffs are therefore entitled to disgorgement and restitution
24 sufficient to fully disgorge the revenues obtained from plaintiffs as a result of
25 Defendants' false and misleading advertising.

26

27 **X. FIFTH CAUSE OF ACTION**

28

1 **FOR VIOLATION OF TEXAS DECEPTIVE TRADE PRACTICES—**
2 **CONSUMER PROTECTION ACT, TEX. BUS. & COM. CODE § 17.41 *et seq.***

3 106. Plaintiff fully incorporates by reference herein all of the above
4 paragraphs, as though fully set forth herein.

5 107. Defendants do not tell class members residing in California when
6 entering into a contract and receiving payments that the class member has waived
7 any rights to proceed against any service provider for damages, that he/she must
8 arbitrate disputes in Harris, County, Texas, and pay all costs of arbitration.
9 Defendants, in contrast, do not bind themselves to similar terms and limitations, and
10 retain their right to sue any class member in court without limitation.

11 108. The dispute resolution terms, waivers and restrictions set forth in
12 Defendants' written contract are unlawful, procedurally and substantively
13 unconscionable, unfair and void and unenforceable.

14 109. Defendants attempt to add such terms after receiving payment from
15 class members lack mutuality, are unconscionable, unlawful and void. Defendants
16 conduct also violates § 17.46(b)(23) of the TEXAS DECEPTIVE TRADE
17 PRACTICES—CONSUMER PROTECTION ACT, TEX. Bus. & COM. CODE §
18 17.41 *et seq.* (Vernon 2002 & Supp. 2009) ("DTPA") and other applicable law.
19 As a result of the foregoing, class members have been injured and suffered damage.
20 As a result, class members are entitled to declaratory relief, damages, injunctive
21 relief and all other relief that may be appropriate under the circumstances.

22 **XI. SIXTH CAUSE OF ACTION**

23 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

24 110. Plaintiff fully incorporates by reference herein all of the above
25 paragraphs, as though fully set forth herein.

1 111. Plaintiff brings this action individually, on behalf of the Class, and on
2 behalf of the general public pursuant to § 17200 *et. seq.* of the Bus. & Prof. Code,
3 the Unfair Competition Act (the “UCL”).

4 112. Plaintiff brings this claim on behalf of the Class pursuant to *Bus. &*
5 *Prof. Code §17204* which prohibits unfair competition, defined as “any unlawful,
6 unfair or fraudulent business act or practice.” Plaintiff and the Class seek
7 compensation for the loss of their property and the personal financial impacts they
8 have suffered as a result of Defendants’ unfair business practices. Plaintiff suffered
9 injury and out of pocket loss as a result of Defendants’ conduct, as described above
10 Defendants’ conduct, as described above. Defendants’ conduct, as described above,
11 has been and continues to be detrimental to the Class and Plaintiffs are seeking to
12 enforce important rights affecting the public interest within the meaning of *Code of*
13 *Civil Procedure §1021.5.*

14 113. Defendants conspired amongst themselves to engage in the above-
15 described unlawful, unfair, unconscionable and/or fraudulent business acts and
16 practices in California, and that conduct emanated to and affected Class members
17 throughout California. As such, the UCL applies to all such transactions and
18 dealings.

19 114. The acts complained of herein, and each of them, constitute unfair,
20 unlawful or fraudulent business practices in violation of *Business and Professions*
21 *Code §17200 et. seq.* Such acts and violations have not abated and will continue to
22 occur unless enjoined. Defendants’ acts and practices described herein offend
23 established public policies, and involve business practices that are immoral,
24 unethical, oppressive, and/or unscrupulous.

25 115. The unfair business practices set forth above have and continue to injure
26 the Class and the general public and cause the loss of money, as described further
27 within. These violations have unjustly enriched the Defendants at the expense of the
28

1 Class. As a result, Plaintiff, the Class and the general public are entitled to
2 injunctive relief, restitution, and other equitable relief. Failing to compensate the
3 Class Members for necessary expenditures constitute restitution of property earned
4 by the consumer.

5 By reason of the foregoing, Plaintiff and each member of the Class are entitled to
6 recover from Defendant restitution, unpaid expenditures, injunctive relief,
7 declaratory relief, the cost of bringing this action (including reasonable attorneys'
8 fees and costs), and any other relief allowed by law and deemed just and equitable in
9 the circumstances.

10 **VII. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, Jeffery DeLong, as an individual and on behalf of
12 those similarly situated, pray for relief and judgment against Defendants, jointly and
13 severally, as follows:

14 A. For an order certifying the class and any appropriate subclasses thereof
15 and appointing Plaintiff Jeffery DeLong and his counsel to represent the Class in this
16 litigation;

17 B. For an order pursuant to *California Business and Professions Code*
18 section 17203 and *California Civil Code section 1780(a)(2)* and other unfair
19 competition laws and/or consumer protection laws of the various states where
20 Plaintiff Class members reside enjoining TaxMasters from falsely advertising and/or
21 charging up-front fees for services it cannot perform.

22 C. For judgment against TaxMasters ordering it to restore to Plaintiffs and
23 the Class Members all amounts which may have been acquired by means of any
24 practices found by the Court to be contrary to the provisions of *California Business*
25 and *Professions Code sections 17200, et seq.* and other unfair competition laws of
26 the various states where Plaintiff Class members reside;

D. For judgment against TaxMasters ordering it to disgorge its unlawfully-obtained revenues, which may have been acquired by means of practices found by this Court to be contrary to the provisions of *California Business and Professions Code sections 17200, et seq.* And under other unfair competition laws of the various states where Plaintiff Class members reside;

E. For civil penalties as provided by *California Business and Professions Code section 17206* and other unfair competition laws of the various states where Plaintiff Class members reside:

F. For payment of attorneys' fees pursuant to *California Code of Civil Procedure section 1021.5* and/or pursuant to the "common fund" doctrine and/or pursuant to equitable principles of contribution:

G. For preliminary and permanent injunctive relief prohibiting Defendants from engaging in the wrongful practices alleged in this Complaint:

H. For costs associated with any and all notice to the Class Members pursuant to *California Civil Code section 1781(d)* and other consumer protection laws of the various states where Plaintiff Class members reside:

I. For payment of costs of suit incurred herein:

J. For payment of prejudgment interest as provided by law; and

K. For any such further relief as this Court deems equitable, just and proper.

Respectfully submitted,

~~RIDQUIT & LYON, LLP~~

Dated: February 14, 2011 By:

Christopher P. Ridout, CA Bar No. 143931
Devon M. Lyon, CA Bar No. 218293
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Attorneys for Plaintiff

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5 Between TaxMasters and Denise Miranda
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9 D. Affidavit of Karen Sanchez
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11 E. Affidavit of Crespin Gonzales
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13 F. Affidavit of Arturo Fierro
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17 H. Correspondence to Plaintiff DeLong from Harris County (Texas) District
18 Attorney dated June 16, 2009
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20 I. Defendants' Correspondence to Consumer Denying Refund dated October
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27 October 20, 2008
28
29 L. Plaintiff's E-mail to Defendants dated October 20, 2008
30
31 M. Defendants' Correspondence to Plaintiff DeLong dated October 23, 2008
32
33 N. Plaintiff's Correspondence to Defendants and Fax Confirmation Log dated
34 October 24, 2008
35
36 O. Plaintiff's E-mail to Defendants revoking Power of Attorney dated October
37 24, 2008 and Fax Confirmation Log
38
39 P. Plaintiff DeLong's Correspondence to Defendants dated November 6, 2008
40 and Certified Mail Receipt
41
42 Q. Correspondence to Plaintiff from Bank of America and Plaintiff's
43 Corresponding Certified Mail Receipt dated November 6, 2008
44
45 R. Defendants' Hiring Advertisement